

Remarks

The Office Action mailed September 14, 2005 has been carefully reviewed and the foregoing amendment has been made in consequence thereof.

Claims 1-18 are pending in this application. Claims 1-16 stand rejected. Claims 17-18 have been newly added. No new matter has been added.

The rejection of Claims 1-12 and 14-16 under 35 U.S.C. § 103(a) as unpatentable over U.S. Patent No. 5,390,847 (Young) or U.S. Patent No. 6,354,487 (Muisse) in view of U.S. Patent No. 6,050,419 (Flanagan) and H1748 (Marinelli) is respectfully traversed.

Applicants respectfully submit that none of Young, Muise, Flanagan or Marinelli, alone or in combination, describe or suggest the claimed invention. As discussed below, at least one of the differences between the cited references and the present invention is that none of Young, Muise, Flanagan or Marinelli, alone or in combination, describe or suggest a shipping system that includes at least two substantially open-topped shipping trays wherein each of the shipping trays is operably configured to be capable of being stacked atop another of the at least two trays and wherein in the stacked configuration each of the shipping trays has at least one shipping tray positioned adjacent thereto *such that a pair of adjacently stacked shipping trays includes an upper adjacent substantially open-topped shipping tray and a lower adjacent substantially open-topped shipping tray*, and a cover operably configured to be positioned atop an uppermost one of the at least two substantially open-topped shipping trays of the at least one shipping unit *wherein the bottom wall of each upper adjacent substantially open-topped shipping tray is a lid for each lower adjacent substantially open-topped shipping tray*. (Emphasis added.)

Rather, Young describes a fruit and product container having a bottom, two side walls, two end walls, and a top that is removably attached to the container. In Young, the top includes an opening at each end thereof that is configured to receive a stacking alignment tab extending from each of the two end walls. In other words, in Young, each container includes a top that facilitates holding the end walls in place and provides further stacking strength. Young does not describe or suggest a pair of adjacently stacked shipping trays that includes an upper adjacent

substantially open-topped shipping tray and a lower adjacent substantially open-topped shipping tray, wherein the bottom wall of each upper adjacent substantially open-topped shipping tray is a lid for each lower adjacent substantially open-topped shipping tray.

Similarly, Muise describes a container having a containment portion and a lid. The lid includes a lateral panel and an upright wall connected to the lateral panel. Once erected and with the lid in a closed position, the containers are stacked. Muise does not describe or suggest a pair of adjacently stacked shipping trays that includes an upper adjacent substantially open-topped shipping tray and a lower adjacent substantially open-topped shipping tray, wherein the bottom wall of each upper adjacent substantially open-topped shipping tray is a lid for each lower adjacent substantially open-topped shipping tray.

Young describes a fruit and product container 10 having a bottom 12 and two side walls 14 formed of a common piece of corrugated cardboard. The container 10 also has two end walls 16 formed of laminated paperboard attached to the bottom 12 and side walls 14 to define a box. The two laminated paperboard end walls 16 may enhance a stacking strength and moisture resistance of the container 10. A top 18 may be removably attached to stacking alignment tabs 22 that extend upwardly from the end walls 16.

Muise describes a combined stacking tab for use with a container having a containment portion 30 and a lid 20. The containment portion 30 includes a lateral panel 32 and an upright wall 34. The upright wall 34 includes an upper edge 36 with a stacking tab 38. The lid 20 also includes a lateral panel 22 and an upright wall 24 connected to the lateral panel 22. A lid stacking tab 26 is cut from portions of the lid lateral panel 22 at its connection to the lid upright wall 24, thereby resulting in an opening 28 in the lid lateral panel 22. As erected, the lid stacking tab 26 remains in the plane of the lid upright wall 24, with the containment portion stacking tab 38 being located within the opening 28 of the lid lateral panel 22. The combination of the containment portion stacking tab 38 and the lid stacking tab 26 forms a combined stacking tab of at least one double-ply material thickness.

Flanagan describes an adjustable-length, reusable, recyclable pallet wrap 10 for constraining a lading while displaying high-impact graphics. The pallet wrap 10 preferably has a

set of horizontally-spaced, vertically oriented, preformed lines 32 of reduced resistance to bending at each of four regions to facilitate providing a snug fit around typical pallets 12 or loadings of various sizes. In one embodiment, a dual-function pallet wrap 10 is provided which can function as a pallet skirt for in-store displays in addition to functioning as a constraint for the loading.

Marinelli describes a package for packs, for example packs of absorbent articles, each pack comprising a plurality of such absorbent articles and a wrapper of flexible material with a carrying handle at the top. The package comprises a plurality of packs disposed side by side and fixed together with adhesive tape. The adhesive tape being detachable without tearing the flexible material. Each handle is capable of supporting the weight of the entire package.

Claim 1 recites a shipping system for the facilitated packing and transportation of items, wherein the items are of a type requiring separation between vertically stacked layers, and the shipping system includes “at least one shipping unit, each shipping unit further comprising...at least two substantially open-topped shipping trays, wherein each of said shipping trays is operably configured to be capable of being stacked atop another of the at least two trays, wherein in the stacked configuration each of said shipping trays has at least one shipping tray positioned adjacent thereto such that a pair of adjacently stacked shipping trays includes an upper adjacent substantially open-topped shipping tray and a lower adjacent substantially open-topped shipping tray...each tray having a top, two opposing side walls and a bottom wall, the bottom wall having a bottom surface...a cover, operably configured to be positioned atop an uppermost one of said at least two substantially open-topped shipping trays of the at least one shipping unit, wherein the bottom wall of each upper adjacent substantially open-topped shipping tray is a lid for each lower adjacent substantially open-topped shipping tray...and at least one binding member, operably configured to hold the cover atop the uppermost substantially open-topped shipping tray of the at least one shipping unit, by extending at least partially across the top, down the side walls and at least partially across the bottom wall of a plurality of stacked articles, wherein the binding member comprises at least one strip of adhesive material, simultaneously engaging a top surface of the cover and the bottom surface of a bottom-most one of said at least two substantially open-topped shipping trays...wherein each substantially open-topped shipping tray

of said at least two substantially open-topped shipping trays has substantially the same top plan configuration, and the cover has a top plan configuration substantially the same as each of said at least two substantially open-topped shipping trays.”

None of Young, Muise, Flanagan or Marinelli, considered alone or in combination, describe or suggest all of the recitations of Claim 1. For example, none of Young, Muise, Flanagan or Marinelli, considered alone or in combination, describe or suggest a shipping system including at least two substantially open-topped shipping trays wherein each of the shipping trays is operably configured to be capable of being stacked atop another of the at least two trays and wherein in the stacked configuration each of the shipping trays has at least one shipping tray positioned adjacent thereto *such that a pair of adjacently stacked shipping trays includes an upper adjacent substantially open-topped shipping tray and a lower adjacent substantially open-topped shipping tray*, and a cover operably configured to be positioned atop an uppermost one of the at least two substantially open-topped shipping trays of the at least one shipping unit *wherein the bottom wall of each upper adjacent substantially open-topped shipping tray is a lid for each lower adjacent substantially open-topped shipping tray*. (Emphasis added.)

Rather, Young describes a fruit and product container having a bottom, two side walls, two end walls, and a top that is removably attached to the container. In Young, the top includes an opening at each end that is configured to receive a stacking alignment tab extending from each of the two end walls. In Young, each container includes a separate top that facilitates holding the end walls in place and provides further stacking strength. Young does not describe or suggest a pair of adjacently stacked shipping trays including an upper adjacent substantially open-topped shipping tray and a lower adjacent substantially open-topped shipping tray, wherein the bottom wall of each upper adjacent substantially open-topped shipping tray is a lid for each lower adjacent substantially open-topped shipping tray.

Similarly and in contrast to the present invention, Muise describes a container having a containment portion and a lid. The lid includes a lateral panel and an upright wall connected to the lateral panel. Once erected and with the lid in a closed position, the containers described in Muise are then stacked. Thus, Muise does not describe or suggest a pair of adjacently stacked shipping trays including an upper adjacent substantially open-topped shipping tray and a lower

adjacent substantially open-topped shipping tray, wherein the bottom wall of each upper adjacent substantially open-topped shipping tray is a lid for each lower adjacent substantially open-topped shipping tray.

Moreover, neither Flanagan nor Marinelli make up for the deficiencies of Young and Muise. Accordingly, none of Young, Muise, Flanagan or Marinelli, considered alone or in combination, describe or suggest a shipping system including at least two substantially open-topped shipping trays wherein each of the shipping trays is operably configured to be capable of being stacked atop another of the at least two trays and wherein in the stacked configuration each of the shipping trays has at least one shipping tray positioned adjacent thereto *such that a pair of adjacently stacked shipping trays includes an upper adjacent substantially open-topped shipping tray and a lower adjacent substantially open-topped shipping tray*, and a cover operably configured to be positioned atop an uppermost one of the at least two substantially open-topped shipping trays of the at least one shipping unit *wherein the bottom wall of each upper adjacent substantially open-topped shipping tray is a lid for each lower adjacent substantially open-topped shipping tray*. (Emphasis added.)

Because none of Young, Muise, Flanagan or Marinelli teaches or suggests one or more of the claimed elements, it follows that a combination of Young, Muise, Flanagan and Marinelli cannot teach or suggest those elements. Accordingly, Claim 1 is submitted to be patentable over Young or Muise in view of Flanagan and Marinelli.

Claims 2-12 and 14-16 depend, directly or indirectly, from independent Claim 1. When the recitations of Claims 1-12 and 14-16 are considered in combination with the recitations of Claim 1, Applicants submit that dependent Claims 2-12 and 14-16 likewise are patentable over Young or Muise in view of Flanagan and Marinelli.

Additionally, Applicants respectfully submit that the Section 103 rejection of the presently pending claims is not a proper rejection. Obviousness cannot be established by merely suggesting that it would have been obvious to one of ordinary skill in the art to modify Young or Muise with Flanagan and Marinelli. As explained by the Federal Circuit, “to establish obviousness based on a combination of the elements disclosed in the prior art, there must be

some motivation, suggestion or teaching of the desirability of making the specific combination that was made by the Applicant.” In re Kotzab, 54 USPQ2d 1308, 1316 (Fed. Cir. 2000). MPEP 2143.01.

Furthermore, as is well established, the mere fact that the prior art structure could be modified does not make such a modification obvious unless the prior art suggests the desirability of doing so. See In re Gordon, 221 U.S.P.Q.2d 1125 (Fed. Cir. 1984). Furthermore, the Federal Circuit has determined that:

[I]t is impermissible to use the claimed invention as an instruction manual or “template” to piece together the teachings of the prior art so that the claimed invention is rendered obvious. This court has previously stated that “[o]ne cannot use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention.” In re Fitch, 23 USPQ2d 1780, 1784 (Fed. Cir. 1992).

Further, under Section 103, “it is impermissible . . . to pick and choose from any one reference only so much of it as will support a given position, to the exclusion of other parts necessary to the full appreciation of what such reference fairly suggests to one of ordinary skill in the art.” In re Wesslau, 147 USPQ 391, 393 (CCPA 1965). Rather, there must be some suggestion, outside of Applicants’ disclosure, in the prior art to combine such references, and a reasonable expectation of success must be both found in the prior art, and not based on Applicants’ disclosure. In re Vaeck, 20 U.S.P.Q.2d 1436 (Fed. Cir. 1991). In the present case, neither a suggestion nor motivation to combine the cited art, nor any reasonable expectation of success has been shown.

Accordingly, since there is no teaching nor suggestion in the cited art for the claimed combination, the Section 103 rejection appears to be based on a hindsight reconstruction in which isolated disclosures have been picked and chosen in an attempt to deprecate the present invention. Of course, such a combination is impermissible, and for this reason alone, Applicants request that the Section 103 rejection of Claims 1-12 and 14-16 be withdrawn.

For at least the reasons set forth above, Applicants respectfully request that the 35 U.S.C. §103(a) rejection of Claims 1-12 and 14-16 be withdrawn.

The rejection of Claim 13 under 35 U.S.C. § 103(a) as unpatentable over Young or Muise in view of Flanagan and Marinelli, and further in view of Presentation Brochure, "Corrugated Common Footprint for Product Packaging, Kroger, September 13, 2000", by Fibre Box Association (Corrugated Common Footprint) is respectfully traversed.

Young, Muise, Flanagan and Marinelli are described above.

Claim 13 depends from independent Claim 1, which is recited above. None of Young, Muise, Flanagan, Marinelli or Corrugated Common Footprint, considered alone or in combination, describe or suggest all of the recitations of Claim 1. For example, as discussed above, none of Young, Muise, Flanagan or Marinelli, considered alone or in combination, describe or suggest a shipping system including at least two substantially open-topped shipping trays wherein each of the shipping trays is operably configured to be capable of being stacked atop another of the at least two trays and wherein in the stacked configuration each of the shipping trays has at least one shipping tray positioned adjacent thereto such that a pair of adjacently stacked shipping trays includes an upper adjacent substantially open-topped shipping tray and a lower adjacent substantially open-topped shipping tray, and a cover operably configured to be positioned atop an uppermost one of the at least two substantially open-topped shipping trays of the at least one shipping unit wherein the bottom wall of each upper adjacent substantially open-topped shipping tray is a lid for each lower adjacent substantially open-topped shipping tray. Corrugated Common Footprint does not make up for the deficiencies of Young, Muise, Flanagan and Marinelli. Because none of Young, Muise, Flanagan, Marinelli or Corrugated Common Footprint teach or suggest one or more of the claimed elements, it follows that a combination of Young, Muise, Flanagan, Marinelli and Corrugated Common Footprint cannot teach or suggest those elements. Accordingly, Claim 1 is submitted to be patentable over Young or Muise in view of Flanagan and Marinelli and further in view of Corrugated Common Footprint.

Claim 13 depends from independent Claim 1. When the recitations of Claim 13 are considered in combination with the recitations of Claim 1, Applicants submit that dependent Claim 13 likewise is patentable over Young or Muise in view of Flanagan and Marinelli and further in view of Corrugated Common Footprint.

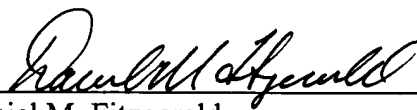
For at least the reasons set forth above, Applicants respectfully request that the 35 U.S.C. §103(a) rejection of Claim 13 be withdrawn.

Newly added dependent Claim 17 depends from independent Claim 1. Claim 17 further recites that each of the open-topped shipping trays is fabricated from “a single piece of corrugated paperboard material”. None of the cited references, alone or in combination, describe or teach this recitation. Accordingly, it is further submitted that Claim 17 is patentable over the cited references.

Newly added dependent Claim 18 depends from independent Claim 1. Claim 18 further recites that each of the open-topped shipping trays further comprises “a gusset positioned at each corner of the bottom wall, each gusset extending diagonally connecting at least one of the front wall and the rear wall to at least one of the two opposing side walls”. None of the cited references, alone or in combination, describe or teach this recitation. Accordingly, it is further submitted that Claim 18 is patentable over the cited references.

In view of the foregoing amendments and remarks, all the claims now active in the application are believed to be in condition for allowance. Favorable action is respectfully solicited.

Respectfully submitted,



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